

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA
JOHNSTOWN DIVISION**

ANTHONY J. ZANGHI, KENNETH J.
SOWERS, DOMINIC MCCUCH, JAMES
HOHMAN, DARRELL SHETLER on behalf
of themselves and others similarly situated, and
UNITED STEEL, PAPER AND FORESTRY,
RUBBER, MANUFACTURING, ENERGY,
ALLIED INDUSTRIAL AND SERVICE
WORKERS INTERNATIONAL UNION,
AFL-CIO/CLC,

Plaintiffs,

v.

FREIGHTCAR AMERICA, INC.,
JOHNSTOWN AMERICA CORPORATION,
and JOHNSTOWN AMERICA
CORPORATION USWA HEALTH &
WELFARE PLAN,

Defendants.

Civil Action No.: 13-146

Class Action

Jury Trial Demanded

Electronically Filed

Judge Gibson

**APPENDIX IN SUPPORT OF PLAINTIFFS'
THIRD MOTION FOR SUMMARY JUDGMENT AS TO LIABILITY**

William T. Payne
wpayne@fdpklaw.com
Feinstein Doyle Payne & Kravec, LLC
Pittsburgh North Office
12 Eastern Avenue
Pittsburgh, PA 15215
(412) 492-8797

Pamina Ewing
pewing@fdpklaw.com
Joel R. Hurt
jhurt@fdpklaw.com
Feinstein Doyle Payne & Kravec, LLC
Allegheny Building, 17th Floor
429 Forbes Avenue
Pittsburgh, PA 15219
(412) 281-8400

*Counsel for Plaintiffs Zanghi, Sowers,
McCuch, Hohman, and Shetler, and the
Class*

Joseph P. Stuligross
Associate General Counsel
jestuligross@usw.org
United Steelworkers
Five Gateway Center, Suite 807
Pittsburgh, PA 15222
(412) 562-2526

*Counsel for Plaintiff United Steel, Paper
and Forestry, Rubber, Manufacturing,
Energy, Allied Industrial and Service
Workers International Union, AFL-
CIO/CLC*

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Judge Kim R. Gibson

**DECLARATION OF PAMINA EWING IN SUPPORT OF
PLAINTIFFS' THIRD MOTION FOR SUMMARY JUDGMENT AS TO LIABILITY**

Pamina Ewing hereby declares:

1. I am a partner in the law firm of Feinstein Doyle Payne & Kravec, LLC.

2. I submit this declaration in support of the Plaintiffs' Statement of Undisputed Facts in Support of Plaintiffs' Third Motion for Partial Summary Judgment as to Liability.

3. The following documents are true and accurate copies and are attached to this Declaration:

<u>Exhibit No.</u>	<u>Description</u>
Exhibit A	<u>Deemer</u> Complaint
Exhibit B	Letter from JAC dated February 1, 2002 (Exhibit E to the June 27, 2002 Affidavit of Andrew Palm)
Exhibit C	July 14, 2003 Memorandum Opinion and Order in <u>Deemer</u>
Exhibit D	August 28, 2003 Memorandum Order in <u>Deemer</u>
Exhibit E	<u>Britt</u> Complaint
Exhibit F	2005 <u>Britt-Deemer</u> Settlement Agreement
Exhibit G	August 5, 2013 Declaration of Thomas McCarthy
Exhibit H	<u>Sowers</u> Complaint
Exhibit I	<u>Sowers</u> Settlement Agreement
Exhibit J	FreightCar's July 8, 2013 Complaint
Exhibit K	July 9, 2013 Letter from FreightCar to counsel for USW
Exhibit L	August 7, 2002 Affidavit of Mark J. Duray
Exhibit M	FreightCar Summary Judgment Brief in <u>Deemer</u>
Exhibit N	June 27, 2002 Affidavit of Andrew Palm
Exhibit O	Mirroring Agreement (Exhibit B to the June 27, 2002 Affidavit of Andrew Palm)
Exhibit P	FreightCar's Answer in <u>Deemer</u>
Exhibit Q	September 9, 2002 Supplemental Affidavit of Andrew Palm
Exhibit R	Bethlehem PHMB (Exhibit A to the June 27, 2002 Affidavit of Andrew Palm)
Exhibit S	FreightCar's September 30, 2002 Summary Judgment Reply Brief in <u>Deemer</u>
Exhibit T	Excerpts from December 18, 2003 Deposition Transcript of Mark Duray

<u>Exhibit No.</u>	<u>Description</u>
Exhibit U	Deposition Transcript of Andrew Palm
Exhibit V	Letter from FreightCar dated March 1, 2002
Exhibit W	Excerpts from 1993 Summary Plan Description
Exhibit X	"Retiree Insert" to 1993 Summary Plan Description
Exhibit Y	Missing Pages from 1993 Summary Plan Description
Exhibit Z	Excerpts from the December 10, 2003 Deposition Transcript of Glenn Grove
Exhibit AA	Letter dated July 31, 1992 from Jerry Sokolow
Exhibit BB	Letter dated January 22, 1993 from Jerry Sokolow
Exhibit CC	Letter dated March 26, 1993 from counsel for FreightCar
Exhibit DD	April 30, 2003 Affidavit of Joseph S. Canini, Jr.
Exhibit EE	Excerpts from February 25, 2004 Deposition Transcript of Claud McIver
Exhibit FF	Excerpts from May 27, 2004 Deposition Transcript of John Plunkard
Exhibit GG	Letter from FreightCar President James Cirar, dated November 7, 1997
Exhibit HH	FreightCar 1997 Bargaining Priorities
Exhibit II	FreightCar "Critical Issues" Memorandum
Exhibit JJ	Excerpts from May 25, 2005 Deposition Transcript of James Cirar
Exhibit KK	1997 Collective Bargaining Agreement
Exhibit LL	1991 Collective Bargaining Agreement
Exhibit MM	Letter dated June 3, 1999 from FreightCar's President (Exhibit C to June 27, 2002 Affidavit of Andrew Palm)
Exhibit NN	Letter from Bethlehem to FreightCar, dated January 24, 2002

<u>Exhibit No.</u>	<u>Description</u>
Exhibit OO	Letter from FreightCar dated February 1, 2002 (Exhibit E to the June 27, 2002 Affidavit of Andrew Palm)
Exhibit PP	Letter from FreightCar dated March 6, 2002 (Exhibit F to the June 28, 2002 Affidavit of Andrew Palm)

4. I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct and that I have personal knowledge of the facts contained herein and, if called upon to testify, I could and would competently testify thereto.

Executed on July 17, 2014, at Pittsburgh, PA.

s/ Pamina Ewing
Pamina Ewing